APPENDIX

United States Constitutional Provisions Involved

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment

SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life,

liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article I, Section 10

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

Maryland Subversive Activities Act of 1949

Article 85A

ANNOTATED CODE OF MARYLAND (1957)
SEDITION AND SUBVERSIVE ACTIVITIES

§ 1. *Definitions.*

For the purposes of this article:

"Organization" means an organization, corporation, company, partnership, association, trust, foundation, fund, club, society, committee, association, political party, or any group of persons, whether or not incorporated, permanently or temporarily associated together for joint action or advancement of views on any subject or subjects.

"Subversive organization" means any organization which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or advocate, abet, advise, or teach activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the State of Maryland, or of any political subdivision of either of them, by revolution, force, or violence.

"Foreign subversive organization" means any organization directed, dominated or controlled directly or indirectly by a foreign government which engages in or advocates, abets, advises, or teaches, or a purpose of which is to engage in or to advocate, abet, advise, or teach, activities intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of the constitutional form of the government of, the United States, or of the

State of Maryland, or of any political subdivision of either of them, and to establish in place thereof any form of government the direction and control of which is to be vested in, or exercised by or under, the domination or control of any foreign government, organization, or individual; but does not and shall not be construed to mean an organization the bona fide purpose of which is to promote world peace by alliances or unions with other governments or world federations, unions or governments to be effected through constitutional means.

"Foreign government" means the government of any country or nation other than the government of the United States of America or of one of the states thereof.

"Subversive person" means any person who commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the State of Maryland, or any political subdivision of either of them, by revolution, force, or violence; or who is a member of a subversive organization or a foreign subversive organization. (An. Code, 1951, § 1; 1949, ch. 86, § 1.)

SEDITION

§ 2. *Unlawful acts.*

It shall be a felony for any person knowingly and wilfully to:

(a) Commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the State of Maryland, or any political subdivision of either of them, by revolution, force, or violence; or

(b) Advocate, abet, advise, or teach by any means any person to commit, attempt to commit, or assist in the commission of any such act under such circumstances as to constitute a clear and present danger to the security of the United States, or of the State of Maryland or of any political subdivision of either of them; or

(c) Conspire with one or more persons to commit any such act; or

(d) Assist in the formation or participate in the management or to contribute to the support of any subversive organization or foreign subversive organization knowing said organization to be a subversive organization or a foreign subversive organization; or

(e) Destroy any books, records or files, or secrete any funds in this State of a subversive organization or a foreign subversive organization, knowing said organization to be such.

Any person who shall be convicted by a court of competent jurisdiction of violating any of the provisions of this section shall be fined not more than twenty thousand dollars, ($20,000), or imprisoned for not more than twenty (20) years, or both, at the discretion of the court. (An. Code, 1951, § 2; 1949, ch. 86, § 2.)

§ 3. *Membership in subversive organization.*

It shall be a felony for any person after June 1, 1949 to become, or after September 1, 1949 to remain a member of a subversive organization or a foreign subversive organization knowing said organization to be a subversive organization or foreign subversive organization. Any person who shall be convicted by a court of competent jurisdiction of violating this section shall be fined not more than five thousand dollars ($5,000), or imprisoned for not more than five (5) years, or both, at the discretion of the court. (An. Code, 1951, § 3; 1949, ch. 86, § 3.)

§ 4. *Effect of conviction.*

Any person who shall be convicted by a court of competent jurisdiction of violating any of the provisions of §§ 2 and 3 of this article, in addition to all other penalties therein provided, shall from the date of such conviction be barred from:

(a) Holding any office, elective or appointive, or any other position of profit or trust in or employment by the government of the State of Maryland or of any agency thereof or of any county, municipal corporation or other political subdivision of said State;

(b) Filing or standing for election to any public office in the State of Maryland; or

(c) Voting in any election held in this State. (An. Code, 1951, § 4; 1949, ch. 86, § 4.)

§ 5. *Dissolution of organizations.*

It shall be unlawful for any subversive organization or foreign subversive organization to exist or function in the State of Maryland and any organization which by a court of competent jurisdiction is found to have violated the provisions of this section shall be dissolved, and if it be a corporation organized and existing under the laws of the State of Maryland a finding by a court of competent jurisdiction that it has violated the provisions of this section shall constitute legal cause for forfeiture of its charter and its charter shall be forfeited under the provisions of Article 23, §§ 104-108, inclusive, Annotated Code of Maryland [1939 Code] and all funds, books, records and files of every kind and all other property of any organization found to have violated the provisions of this section shall be seized by and for the State of Maryland, the funds to be deposited in the State treasury and the books, records, files and other property to be turned over to the Attorney General of Maryland. (An. Code, 1951, § 5; 1949, ch. 86, § 5.)

§ 6. *Special assistant attorney general—Appointment, salary and supervision.*

The Attorney General of Maryland is hereby authorized and directed to appoint an additional assistant to perform the duties of special assistant attorney general in charge of subversive activities whose annual salary shall be provided in the budget, and whose responsibility it shall be, under supervision of the Attorney General, to assemble, arrange and deliver to the State's attorney of any county or of Baltimore City, together with a list of necessary

witnesses, for presentation to the next grand jury to meet in said county or city, all information and evidence of matters within said county or Baltimore City which have come to his attention, relating in any manner to the acts prohibited by this article, and relating generally to the purposes, processes and activities of communism and any other or related subversive organizations, associations, groups or persons. (An. Code, 1951, § 6; 1949, ch. 86, § 6.)

§ 7. *Same—Assistance in collection of evidence and information.*

For the collection of any evidence and information referred to in this article, the Attorney General is hereby directed to call upon the Superintendent of State Police, the police commissioner of Baltimore City and other county and municipal police authorities of the State to furnish to the special assistant hereinbefore provided for, such assistance as may from time to time be required. Such police authorities are directed to furnish information and assistance as may be from time to time so requested. The special assistant attorney general herein provided for may testify before any grand jury as to matters referred to in this article as to which he may have information. (An. Code, 1951, § 7; 1949, ch. 86, § 7.)

§ 8. *Same—Records and reports.*

The Attorney General shall require the special assistant herein provided for, to maintain complete records of all information received by him and all matters handled by him under the requirements of this article. Such records as may reflect on the loyalty of any resident of this State,

shall not be made public or divulged to any person except with permission of the Attorney General to effectuate the purposes of this article. He shall further require the publication, printing and appropriate distribution of all reports of grand juries of this State made as hereinafter provided. The Attorney General shall include in his budget estimates, adequate moneys for the printing and distribution of the said reports, and for all other expenses of administering this article. To the extent that his time may not be required in his duties under this article, the special assistant attorney general shall be available for and perform such other duties as may be assigned to him by the Attorney General. (An. Code, 1951, § 8; 1949, ch. 86, § 8.)

§ 9. *Duty of judges as to grand jury.*

The judge of the criminal court of each county and of Baltimore City, when in his discretion it appears appropriate, or when informed by the State's attorney that there is information or evidence of the character described in § 6 of this article to be considered by the grand jury, shall charge the grand jury to inquire into violations of this article for the purpose of proper action, and further to inquire generally into the purposes, processes and activities and any other matters affecting communism or any related or other subversive organizations, associations, groups or persons. Any grand jury charged by the court as provided herein shall not later than the conclusion of its term of service prepare a written report, separate from all other matters considered by said grand jury, of its findings upon the subjects placed before it under the requirements of this article, provided, however, such report shall not

charge any residents of this State with being disloyal unless they shall have been indicted under the provisions of this article or other provisions of the criminal law of this or some other jurisdiction. (An. Code, 1951, § 9; 1949, ch. 86, § 9.)

LOYALTY

§ 10. *Subversive person not eligible for governmental office.*

No subversive person, as defined in this article, shall be eligible for employment in, or appointment to any office, or any position of trust or profit in the government of, or in the administration of the business of this State, or of any county, municipality, or other political subdivision of this State. (An. Code, 1951, § 10; 1949, ch. 86, § 10.)

§ 11. *Rules and regulations to determine loyalty—In general.*

Every person and every board, commission, council, department, court or other agency of the State of Maryland or any political subdivision thereof, who or which appoints or employs or supervises in any manner the appointment or employment of public officials or employees shall establish by rules, regulations or otherwise, procedures designed to ascertain before any person, including teachers and other employees of any public educational institution in this State, is appointed or employed, that he or she as the case may be, is not a subversive person, and that there are no reasonable grounds to believe such persons are subversive persons. In the event such reasonable grounds exist, he or she as the case may be shall not be appointed or em-

ployed. In securing any facts necessary to ascertain the information herein required, the applicant shall be required to sign a written statement containing answers to such inquiries as may be material, which statement shall contain notice that it is subject to the penalties of perjury. (An. Code, 1951; § 11; 1949, ch. 86, § 11.)

§ 12. *Same—Not applicable to laborers.*

The inquiries prescribed in § 11, other than the written statement to be executed by an applicant for employment, shall not be required as a prerequisite to the employment of any persons in the classification of laborers in any case in which the employing authority shall in his or its discretion determine, and by rule or regulation specify the reasons why, the nature of the work to be performed is such that employment of persons as to whom there may be reasonable grounds to believe that they are subversive persons as defined in this article will not be dangerous to the health of the citizens or the security of the governments of the United States, the State of Maryland, or any political subdivision thereof. (An. Code, 1951, § 12; 1949, ch. 86, § 12.)

§ 13. *Statement of employees.*

Every person, who on June 1, 1949 shall be in the employ of the State of Maryland or of any political subdivision thereof, other than those now holding elective office shall be required on or before August 1, 1949, to make a written statement which shall contain notice that it is subject to the penalties of perjury, that he or she is not a subversive person as defined in this article, namely, any person who

commits, attempts to commit, or aids in the commission, or advocates, abets, advises or teaches by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy or alter, or to assist in the overthrow, destruction or alteration of, the constitutional form of the government of the United States, or of the State of Maryland, or any political subdivision of either of them, by revolution, force, or violence; or who is a member of a subversive organization or a foreign subversive organization, as more fully defined in this article. Such statement shall be prepared and execution required by the State Commissioner of Personnel for all persons whose employment is subject to the provisions of Article 64A of the Annotated Code of Maryland and by the city service commission of Baltimore for all employees whose employment is subject to the provisions of §§ 142 to 156 of the Baltimore City Charter and by every person and every board, commission, council, department, court or other agency of the State of Maryland or any political subdivision thereof responsible for the supervision of other employees, for employees under its jurisdiction. Any such person failing or refusing to execute such a statement or who admits he is a subversive person as defined in this article shall immediately be discharged. (An. Code, 1951, § 13; 1949, ch. 86, § 13; 1953, ch. 310.)

§ 14. *Discharge from office.*

Reasonable grounds on all the evidence to believe that any person is a subversive person, as defined in this article, shall be cause for discharge from any appointive office or other position of profit or trust in the government of or

in the administration of the business of this State, or of any county, municipality or other political subdivision of this State, or any agency thereof. The State Commissioner of Personnel and the civil service commission of Baltimore shall, by appropriate rules or regulations, prescribe that persons charged with being subversive persons, as defined in this article, shall be accorded notice and opportunity to be heard, in accordance with the procedures prescribed by law for discharges for other reasons. Every person and every board, commission, council, department, or other agency of the State of Maryland or any political subdivision thereof having responsibility for the appointment, employment or supervision of public employees not covered by the classified service in this section referred to, shall establish rules or procedures similar to those required herein for classified services for a hearing for any person charged with being a subversive person, as defined in this article, after notice and opportunity to be heard. Every employing authority discharging any person pursuant to any provision of this article shall promptly report to the special assistant attorney general in charge of subversive activities the fact of and the circumstances surrounding such discharge. A person discharged under the provisions of this section shall have the right to appeal to the circuit court of the county or to the Baltimore City court wherein such person may reside for a determination by such court (with the aid of a jury, if the appellant so elects) as to whether or not the discharge appealed from was justified under the provisions of this article. The court shall speedily hear and determine such appeals, and from the judgment of the court, there shall be a further appeal to the

Court of Appeals of Maryland as in civil cases. (An. Code, 1951, § 14; 1949, ch. 86, § 14; 1953, ch. 310; 1962, ch. 36, § 54.)

§ 15. *Statements of candidates for office.*

No person shall become a candidate for election under the provisions of Article 33 of the Annotated Code of Maryland to any public office whatsoever in this State, unless he or she shall file with the certificate of nomination required by the foregoing Article 33, an affidavit that he or she is not a subversive person as defined in this article; provided that, in the case of certificates of nomination for President or Vice-President of the United States, the affidavit may be made on behalf of such candidates by those persons who file the certificate of nomination for such candidates. No certificate of nomination shall be received for filing by any board of supervisors of elections or by the Secretary of State of Maryland unless accompanied by the affidavit aforesaid, and there shall not be entered upon any ballot or voting machine at any election the name of any person who has failed or refused to make the affidavit aforesaid. (An. Code, 1951, § 15; 1949, ch. 86, § 15.)

§ 16. *Statement of private institution of learning before receiving public funds.*

Before any appropriation of public funds of any character shall be made by the State of Maryland to any private institution of learning, there shall be filed with the Governor, the President of the Senate and the Speaker of the House of Delegates, on behalf of said institution, a written report setting forth what procedures it has adopted to de-

termine whether it has reasonable grounds to believe that any subversive persons are in its employ, and what steps, if any, have been or are being taken to terminate such employment. In the absence of such a report no appropriation shall be included in the State budget or approved by the General Assembly. (An. Code, 1951, § 16; 1949, ch. 86, § 16.)

§ 17. *False statements constitute perjury.*

Every written statement made pursuant to this article by an applicant for appointment or employment, or by any employee, shall be deemed to have been made under oath if it contains a declaration preceding the signature of the maker to the effect that it is made under the penalties of perjury. Any person who makes a material misstatement of fact (a) in any such written statement, or (b) in any affidavit made pursuant to the provisions of this article, or (c) under oath in any hearing conducted by any agency of the State, or of any of its political subdivisions, pursuant to this article, or (d) in any written statement by an applicant for appointment or employment or by an employee in any State aid or private institution of learning in this State, intended to determine whether or not such applicant or employee is a subversive person as defined in this article, which statement contains notice that it is subject to the penalties of perjury, shall be subject to the penalties of perjury prescribed in Article 27, § 439 of the Annotated Code. (An. Code, 1951, § 17; 1949, ch. 86, § 17.)

§ 18. *Severability.*

If any provision, phrase, or clause of this article or the application thereof to any person or circumstance is held

invalid, such invalidity shall not affect other provisions, phrases, or clauses or applications of this article which can be given effect without the invalid provision, phrase, or clause or application, and to this end the provisions, phrases and clauses of this article are declared to be severable. (An. Code, 1951, § 18; 1949, ch. 86, § 18.)

§ 19. *Short title.*

This article may be cited as the Subversive Activities Act of 1949. (An. Code, 1951, § 19; 1949, ch. 86, § 19.)

CERTIFICATION OF APPLICANT FOR PUBLIC EMPLOYMENT

Required by Law (Art. 85A, Paragraph 13, Annotated Code of Maryland, 1957)

"I, ..., do hereby
(Print Name—including middle initial)
certify that I am not engaged in one way or another in the attempt to overthrow the Government of the United States, or the State of Maryland, or any political subdivision of either of them, by force or violence.

"I further certify that I understand the aforegoing statement is made subject to the penalties of perjury prescribed in Article 27, Section 439 of the Annotated Code of Maryland (1957 edition)."

Date .....

Signature .....
(Name—including middle initial)

Letter from Attorney General Finan to Governor Tawes

State of Maryland
State Law Department
One Charles Center
Baltimore, Md. 21201

May 13, 1966

The Honorable J. Millard Tawes
Governor of the State of Maryland
State House
Annapolis, Maryland 21404

Dear Governor:

As you may know, on April 18, 1966, the Supreme Court of the United States, dividing 5-4, in *Elfbrandt* v. *Russell,* 34 L.W. 4347, struck down as unconstitutional the Arizona loyalty oath required of public employees of that State and its political subdivisions. The Arizona statute subjected to prosecution for perjury and discharge from public office anyone who took the oath and who "knowingly and willfully becomes or remains" a member of the Communist Party, or "any other organization" having for "one of its purposes" the violent overthrow of the State government, or any of its political subdivisions, where the employee had knowledge of the unlawful purpose.

The Supreme Court declared that:

> "A law which applies to membership without the 'specific intent' to further the illegal aims of the organization infringes unnecessarily on protected freedoms. It rests on the doctrine of 'guilt by association' which has no place here."

Letter from Attorney General Finan to Governor Tawes

In light of the *Elfbrandt* decision, the Maryland Loyalty Pledge has been modified, by eliminating the words "and I am not knowingly a member of an organization engaged in such an attempt", to read as follows:

> "I, ... do hereby certify that I am not engaged in one way or another in the attempt to overthrow the Government of the United States, or the State of Maryland, or any political subdivision of either of them, by force or violence.
>
> "I further certify that I understand the aforegoing statement is made subject to the penalties of perjury prescribed in Article 27, Section 439 of the Annotated Code of Maryland (1957 edition)."

This office is advising the Secretary of State and the Commissioner of Personnel of the modified loyalty pledge devised by this office to meet the constitutional standards required by the decision in the Arizona case.

We are also advising the legal officers of all of Maryland's political subdivisions of the modification, with the suggestion that they recommend to their governing bodies that the County oath, where different, be made to conform to the State oath.

With kind personal regards, I remain

Sincerely,

THOMAS B. FINAN,
Attorney General.

Compilation of State Loyalty Standards for Teachers*

Key

"School" means elementary or secondary school.

"College" means college or university.

"Oath" means that the standard is carried out by requiring oaths of the designated classes of individuals.

Note: Many states may have oaths and disclaimer affidavits for public employees which are probably applied to teachers in public educational institutions. Some of these may be inadvertently admitted in Part I.

I. All public employees:

Ala. Code, tit. 14, § 97(7) (1958) (no oath).

Alaska Const. art. XII, §§ 4, 5 (oath).

Ariz. Rev. Stat. § 15-231 (1956), § 38-231 (1965 Supp.). Held unconstitutional in *Elfbrandt* v. *Russell*, 384 U. S. 11 (1966) (oath).

Fla. Stat. Ann. § 876.05-.09 (1965). Held unconstitutional in *Cramp* v. *Board of Public Instruction of Orange County*, 368 U.S. 278 (1961) (oath).

Ga. Code Ann. § 89-311 to -316 (1963). Held unconstitutional in *Georgia Conference of American Association of University Professors* v. *Board of Regents of the University System of Georgia*, 246 F. Supp. 553 (N.D. Ga. 1965) (oath).

Hawaii, § 5-95, -108 (oath).

Idaho Code, § 59-401 (1965 Supp.). Held unconstitutional in *Heckler* v. *Shepard*, 243 F. Supp. 841 (D. Idaho, 1965) (oath).

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* This Appendix originally appeared in the Brief submitted by the Plaintiff in the case of *Pedlosky* v. *MIT*, —— Mass. ——, 224 N. E. 2d 414 (1967), to the Supreme Judicial Court of Massachusetts. It has been revised to reflect more recent developments.

Compilation of State Loyalty Standards for Teachers

Ill. Ann. Stat. c. 127, §§ 166a, 166b (1965 Supp.) (oath).
Kansas Stat. Ann. 21-305 (1964) (oath).
Neb. Rev. Stat. 11-101.01 (1962) (oath), held unconstitutional in, *Spangler* v. *Board of Regents*, Docket No. 241, D.Ct. Lancaster County, April 17, 1967, opinion reprinted *infra*, pp. 24a-27a.
New Mex. Stat. Ann. § 5-1-12 (1966) (no oath).
Ohio Rev. Code Ann. § 143.272 (1965 Supp.) (no oath).

II. PUBLIC SCHOOL TEACHERS:

Cal. Educ. Code, §§ 12952, 13121 (1960) (oath).
Del. Code Ann. §§ 1204, 1411 (1964 Supp.) (no oath).
Ind. Rev. Stat. § 28-5112 (1948) (oath).
Mont. Rev. Code Ann. § 75-4706 (1962) (oath).
Neb. Rev. Stat. §§ 79-4, 148 (1958) (oath).
Nev. Rev. Stat. §§ 391.080-310 (1965) (oath).
Okla. Stat. Ann. tit. 70 § 6-2 (1950) (no oath).
S. Car. Code § 21-372 (1962) (no oath).
W. Va. Code Ann. § 1807 (1961) (oath).

III. TEACHERS IN PUBLIC SCHOOLS AND PUBLIC COLLEGES:

Ga. Code Ann. § 32-1022 (1952) (oath).
Nev. Const. art 11, § 5 (oath).
N.Y. McK. Educ. Law § 3022 (1953) (no oath).

IV. TEACHERS IN PUBLIC SCHOOLS AND IN PRIVATE SCHOOLS RECEIVING STATE ASSISTANCE:

Tenn. Code Ann. § 49-1304 (1966) (oath).

Compilation of State Loyalty Standards for Teachers

V. TEACHERS IN PUBLIC SCHOOLS AND PUBLIC COLLEGES, AND IN PRIVATE SCHOOLS ACCEPTED BY STATE FOR PURPOSES OF COMPULSORY EDUCATION (HEREINAFTER "ACCEPTED"):

N.H. Rev. Stat. Ann. § 191:2 (1964) (oath). Held unconstitutional in *Opinion of the Justices*, —— N.H. ——, 228 A. 2d 165 (1967).

VI. TEACHERS IN PUBLIC SCHOOLS AND COLLEGES, AND IN PRIVATE SCHOOLS AND COLLEGES RECEIVING STATE FINANCIAL ASSISTANCE:

Ind. Rev. Stat. § 28-5113 (1948) (oath).
Md. Ann. Code, art. 85A, §§ 10-16 (1964) (oath).
Mich. Stat. Ann. § 15.701 (1958) (oath).
Miss. Code Ann. tit. 17, c. 10, §§ 4064-02, -05, -08 (1957) (oath).
Mont. Rev. Code Ann. §§ 18-13-9.1, -9.2 (1940) (oath).
N. Car. Cent. Code Ann. § 15-37-01, -02 (1960) (oath).
Texas Civ. Stat. §§ 2908a, b (1965) (oath).

VII. SAME AS VI EXCEPT ALSO INCLUDES TEACHERS IN ACCEPTED PRIVATE SCHOOLS:

Vt. Stat. Ann. tit. 16, § 4 (1958).

VIII. TEACHERS IN ALL PUBLIC SCHOOLS AND COLLEGES AND IN ALL PRIVATE SCHOOLS AND COLLEGES (1) RECEIVING STATE FINANCIAL ASSISTANCE OR (2) BENEFITING FROM A STATE TAX EXEMPTION:

N.Y. McK. Educ. Law § 3002 (1953) (oath). Upheld in *Knight* v. *Board of Regents*, —— F. Supp. ——, 35 U.S.L.W. 2774 (S.D.N.Y. June 2, 1967).

Compilation of State Loyalty Standards for Teachers

Wash. Rev. Code Ann. § 28.70, -.130, -.151 (1964), apparently held unconstitutional in *Baggett* v. *Bullitt*, 377 U.S. 360 (1964).

IX. TEACHERS IN ALL SCHOOLS AND COLLEGES, PUBLIC AND PRIVATE:

Colo. Rev. Stat. §§ 123-17-6, -7 (1963) (oath). Held unconstitutional in *Gallagher* v. *Smiley*, —— F. Supp. —— (D. Col. April 24, 1967), reprinted, *infra*, pp. 27a-30a.

Ore. Rev. Stat. §§ 342.619, -.620 (1965) (oath). Held unconstitutional in *Brush* v. *Board of Higher Education*, —— Ore. ——, 422 P. 2d 268 (1966).

Penalties for Violation of Future Oath.

I. CRIMINAL PENALTIES:

Ariz. oath, Ariz. Rev. Stat. § 38-231 E (1965 Supp.). The oath was held unconstitutional in *Elfbrandt* v. *Russell*, 384 U.S. 11 (1966) (oath).

Ga. Code Ann. § 89-313, 316 (1963). The oath was held unconstitutional in *Georgia Conference of American Association of University Professors* v. *Board of Regents of the University System of Georgia*, 246 F. Supp. 553 (N.D. Ga., 1965).

II. EXPLICIT STATEMENT THAT "PENALTY" FOR "VIOLATION" IS DISMISSAL:

N.H. Rev. Stat. Ann. § 191:3 (1964). Held unconstitutional in *Opinion of the Justices*, —— N.H. ——, 228 N.E. 2d 165 (1967).

Compilation of State Loyalty Standards for Teachers

III. EXPLICIT STATEMENT THAT PROMISSORY OATH IS NOT SUBJECT TO PERJURY:

Mont. Rev. Code, § 94-3803 (1949). But see § 75-4709 (1962).

N.D. Centen. Code Ann. § 12-14-03 (1960).

"Instruction in Virtue" Statutes Applicable to Private Educational Institutions.

Ind. Stat. Ann. § 28-3428 (1948)—public and private *schools.*

Mass. Gen. Laws, c. 71, § 30A (1965)—private colleges—invalidated in *Pedlosky* v. *MIT*, —— Mass. ——, 224 N.E. 2d 414 (1967).

Rhode Island Gen. Laws, § 16-12-3 (1957)—public and private schools and colleges.

There are, however, a variety of other state statutes which govern the content of instruction in private educational institutions. Many simply detail the courses which must be taught, *e.g.*, the Constitution in eighth grade. Others say that certain attitudes must be fostered, *e.g.*, patriotism.

See also, *Internal Security and Subversion: Principal State Laws and Cases, A Study Prepared by the American Law Division Legislative Reference Service Library of Congress, for the Subcommittee to Investigate the Administration of the Internal Security Act and Other Internal Security Laws of the Committee on the Judiciary, United States Senate,* 89th Cong., 1st Sess. (1965).

Spangler v. *Board of Regents*

IN THE

DISTRICT COURT OF
LANCASTER COUNTY, NEBRASKA

Docket 241 Page 199

KILLEEN P. SPANGLER,

Plaintiff,

—v.—

THE BOARD OF REGENTS OF THE UNIVERSITY OF NEBRASKA, a body politic and corporate, etc.,

Defendant.

JOURNAL ENTRY

This matter came on for trial to the Court, jury waived, on November 16, 1966 on the Amended Petition of plaintiff, the Separate Answer of defendant The Board of Regents of The University of Nebraska, and the Reply of the plaintiff. Plaintiff was present in person and with her counsel; defendant was present through its counsel. Plaintiff adduced evidence and rested. Defendant adduced evidence and rested. Upon the conclusion of the evidence the cause was submitted on briefs and thereafter, and on March 27 1967, oral argument was held and the matter was taken under advisement by the Court. The Court, now being fully advised, finds generally in favor of the plaintiff and against the defendant, and finds that the material allegations in the Amended Petition are true; finds, adjudges and declares that the so-called "loyalty oath" requirement of

Section 11-101.01 and following of the Nebraska statutes, R.R.S. 1943 (Reissue 1962), in the light of recent United States Supreme Court decisions is unconstitutional and void; that said statute and the oath required thereby (or similar affirmation) are void for the reason that they are unconstitutionally vague and indefinite and fail to furnish a precise statement of the conduct which might be construed to violate the oath, in violation of Article I, Sections 3, 11 and 12, Constitution of the State of Nebraska, and Amendments V and XIV of the Constitution of the United States; and for the further reason that they violate freedoms of speech, expression and association, in violation of Article I, Section 3, Article I, Section 5, and Article I, Section 19 of the Constitution of the State of Nebraska, and Amendments I and XIV of the Constitution of the United States.

The Court further finds and determines that plaintiff was hired by the month at the rate of $255 per month and was discharged before completion of her monthly term of employment; that said discharge was solely by reason of her refusal to sign the oath (or similar affirmation) herein held invalid and was therefore without just or lawful cause, and plaintiff is entitled to recover from defendant the sum of $65.11 which is the unpaid balance of her monthly salary.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the Court that the "loyalty oath" requirement (or similar affirmation) of Section 11-101.01 and following, R.R.S. 1943 (Reissue 1962) be, and it hereby is, declared and determined to be unconstitutional, unenforceable and void for the reasons herein found; that it is declared and determined plaintiff and persons in the position of plaintiff are free to seek public employment on their merits and

without disqualification on the basis of said oath requirement; that said oath (or similar affirmation) may not lawfully be required of public employees; and that plaintiff have and recover from the defendant the sum of $65.11 together with costs of action.

Dated April 17th, 1967.

/s/ HERBERT A. RONIN
District Judge

Gallagher* v. *Smiley

IN THE

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLORADO

Civil Action No. 66-C-608

ALAN C. GALLAGHER,

Plaintiff,

—VS.—

JOSEPH R. SMILEY, THE REGENTS OF THE UNIVERSITY OF COLORADO; W. E. BRIGGS and DUKE W. DUNBAR, as Attorney General of the State of Colorado,

Defendants.

MEMORANDUM OPINION AND ORDER

Messrs. William F. Reynard and John D. Herron, Attorneys at Law, 1206 Denver U. S. National Center, Denver, Colorado, for Plaintiffs; John P. Holloway, Resident Counsel for the University of Colorado and Assistant Attorney General for the State of Colorado, Box 13—Regent Hall, Boulder, Colorado, for Defendants.

Before:

HICKEY, *Circuit Judge*,
CHILSON and DOYLE, *District Judges*.

CHILSON, *District Judge*:

The plaintiff instituted this action to enjoin the enforcement of a Colorado Statute (C. R. S. 1963, Chapter 123

Article 17 Sections 6, 7 and 8) which provides, among other things, that a teacher employed to teach at a university in Colorado shall take the loyalty oath which is set forth in the statute and that any person in charge of a university who shall permit any teacher to teach without taking the oath shall be guilty of a misdemeanor.

A Three Judge Court was convened pursuant to Title 28 U. S. C. §2281.

The matter came on for hearing before the Court on April 13, 1967, at which time counsel for the plaintiff and defendants filed an agreed statement of facts. Briefly stated, the agreed facts are that the defendant Mr. Smiley is the President of the University of Colorado; the defendant Regents of the University is the corporate body having supervision of the University of Colorado; defendant Mr. Briggs has the duty of employing and discharging teachers at the University of Colorado; defendant Mr. Dunbar is Attorney General of the State of Colorado and has the duty of enforcing and interpreting on behalf of state officials the statutes of the State of Colorado and is the legal advisor of the Board of Regents; plaintiff is a teacher at the University of Colorado; Mr. Briggs, at the direction of the Regents and upon the advice of Mr. Dunbar, has demanded that plaintiff execute an oath in the form provided in the aforementioned statute as a condition precedent to continuing in the discharge of his duties as a university teacher; the plaintiff refused to take the oath and was thereupon notified in writing "to discontinue giving that instruction and discharging those duties which were contemplated when your faculty employment as lecturer in physics was initiated."

The evidence also discloses that on February 17, 1967 the Regents of the University of Colorado adopted a resolution prescribing a different form of oath than that required by the statute. The defendants have moved to dismiss the complaint on the ground the controversy is moot citing the resolution of February 17, 1967 and stating, "... said Regents no longer require plaintiff's compliance with 123-17-6 through 123-17-8, C. R. S. '63, which they had heretofore adopted verbatim."

The defendants have also moved to dismiss the complaint upon several other grounds.

The Court determines the case is not moot as there is no assurance that the Board of Regents will not at some time in the future require the plaintiff to take the oath prescribed by the statute. *Morris* v. *Williams,* 149 F. 2d 703 (8th Cir. 1945); *United States* v. *Aluminum Co. of America,* 148 F. 2d 416 (2nd Cir. 1945). The Court concludes that the motions to dismiss should be denied and the case should be determined upon its merits.

The facts as above set forth are adopted as the finding of fact of the Court.

The Court concludes as a matter of law that the statute requiring the plaintiff to take the oath in question, when construed in the light of *Baggett* v. *Bullitt,* 377 U. S. 360 (1964) is violative of due process because the oath is unduly vague, uncertain and broad and that a permanent injunction should issue prohibiting the defendants from requiring the plaintiff to take it.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendants and each of them and their successors in office

are hereby perpetually enjoined from requiring the plaintiff to take, subscribe to or execute the oath set forth in Colorado Revised Statutes 1963, Chapter 123 Article 17 Section 6 and from interfering in any way with the continuation by the plaintiff of his duties as a lecturer in physics at the University of Colorado because of the plaintiff's failure to take, subscribe to or execute said oath.

ENTERED this 24th day of April, 1967.

BY THE COURT:

/s/ JOHN J. HICKEY, *Circuit Judge*
/s/ HATFIELD CHILSON, *District Judge*
/s/ WILLIAM E. DOYLE, *District Judge*